

Senate File 2257 - Introduced

SENATE FILE _____
BY KREIMAN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning the employment of unauthorized aliens and
2 providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5662XS 82
5 ec/rj/8

PAG LIN

1 1 Section 1. NEW SECTION. 91F.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Agency" means a state agency, as defined in section
1 5 8A.101, or political subdivision of this state that issues a
1 6 license for purposes of operating a business in this state.
1 7 2. "Basic pilot program" means the basic employment
1 8 verification pilot program as jointly administered by the
1 9 United States department of homeland security and the social
1 10 security administration or its successor program.
1 11 3. "Employee" means an individual who is employed in this
1 12 state for wages paid on an hourly basis by an employer.
1 13 4. "Employer" means any person that transacts business in
1 14 this state, that has a license issued by an agency in this
1 15 state, and that employs one or more individuals who perform
1 16 employment services in this state. "Employer" includes this
1 17 state, any political subdivision of this state, and
1 18 self-employed persons.
1 19 5. "Knowingly employ an unauthorized alien" means the
1 20 actions described in 8 U.S.C. } 1324a. This term shall be
1 21 interpreted consistently with 8 U.S.C. } 1324a and any
1 22 applicable federal regulations.
1 23 6. "License" means any agency permit, certificate,
1 24 approval, registration, charter, or similar form of
1 25 authorization that is required by law and that is issued by an
1 26 agency for the purposes of operating a business in this state.
1 27 "License" includes but is not limited to articles of
1 28 incorporation, a certificate of limited partnership, a
1 29 statement of qualification for a limited liability
1 30 partnership, or any applicable tax permit. "License" does not
1 31 include any professional license.
1 32 7. "Unauthorized alien" means an alien who does not have
1 33 the legal right or authorization under federal law to work in
1 34 the United States as described in 8 U.S.C. } 1324a(h)(3).
1 35 Sec. 2. NEW SECTION. 91F.2 VERIFICATION OF EMPLOYMENT
2 1 ELIGIBILITY == BASIC PILOT PROGRAM.
2 2 Beginning January 1, 2009, every employer, after hiring an
2 3 employee, shall verify the employment eligibility of the
2 4 employee through the basic pilot program.
2 5 Sec. 3. NEW SECTION. 91F.3 EMPLOYMENT OF UNAUTHORIZED
2 6 ALIENS == PROHIBITION == LICENSE SUSPENSION AND REVOCATION.
2 7 1. An employer shall not knowingly employ an unauthorized
2 8 alien.
2 9 2. a. In determining whether an employee is an
2 10 unauthorized alien, a court shall consider only the federal
2 11 government's determination pursuant to 8 U.S.C. } 1373(c).
2 12 The federal government's determination creates a rebuttable
2 13 presumption of the employee's lawful status. The court may
2 14 take judicial notice of the federal government's determination
2 15 and may request the federal government to provide automated or
2 16 testimonial verification pursuant to 8 U.S.C. } 1373(c).
2 17 b. An employer who establishes that the employer has
2 18 complied in good faith with the requirements of 8 U.S.C. }
2 19 1324b constitutes an affirmative defense that the employer did
2 20 not knowingly employ an unauthorized alien. In addition,

2 21 proof of verifying the employment authorization of an employee
2 22 through the basic pilot program creates a rebuttable
2 23 presumption that an employer did not knowingly employ an
2 24 unauthorized alien.

2 25 3. For a first violation of subsection 1 by an employer
2 26 during any three-year period, the court shall do all of the
2 27 following:

2 28 a. Order the employer to terminate the employment of all
2 29 unauthorized aliens.

2 30 b. Order the employer to be subject to a three-year
2 31 probationary period. During the probationary period the
2 32 employer shall file quarterly reports with the county attorney
2 33 regarding each new employee who is hired by the employer to
2 34 work at the specific location where the unauthorized alien
2 35 involved in the violation performed work.

3 1 c. Order the employer to file a signed, sworn affidavit
3 2 with the county attorney within three business days after the
3 3 order is issued. The affidavit shall state that the employer
3 4 has terminated the employment of all unauthorized aliens and
3 5 that the employer will not knowingly employ an unauthorized
3 6 alien.

3 7 (1) The court shall order the appropriate agencies to
3 8 suspend all licenses that are held by the employer if the
3 9 employer fails to file a signed, sworn affidavit with the
3 10 county attorney within three business days after the order is
3 11 issued. All licenses that are suspended under this paragraph
3 12 "c" shall remain suspended until the employer files a signed,
3 13 sworn affidavit with the county attorney. Notwithstanding any
3 14 other law, on filing of the affidavit the suspended licenses
3 15 shall be reinstated immediately by the appropriate agencies.
3 16 For the purposes of this paragraph "c", the licenses that are
3 17 subject to suspension under this paragraph "c" are all
3 18 licenses that are held by the employer and that are necessary
3 19 to operate the employer's business at the employer's business
3 20 location where the unauthorized alien performed work. If a
3 21 license is not necessary to operate the employer's business at
3 22 the specific location where the unauthorized alien performed
3 23 work, but a license is necessary to operate the employer's
3 24 business in general, the licenses that are subject to
3 25 suspension under this paragraph are all licenses that are held
3 26 by the employer at the employer's primary place of business.
3 27 (2) On receipt of the court's order and notwithstanding
3 28 any other law, the appropriate agencies shall suspend the
3 29 licenses according to the court's order. The court shall send
3 30 a copy of the court's order to the attorney general and the
3 31 attorney general shall maintain the copy pursuant to section
3 32 91F.5.

3 33 (3) A court may order the appropriate agencies to suspend
3 34 all licenses described in this paragraph "c" that are held by
3 35 the employer for a period of time not to exceed ten business
4 1 days in the discretion of the court. The court shall base its
4 2 decision to suspend for up to ten business days on any
4 3 evidence or information submitted to the court during the
4 4 action for a violation of this section and shall consider, if
4 5 relevant, the number of unauthorized aliens employed by the
4 6 employer; any prior misconduct by the employer; the degree of
4 7 harm resulting from the violation; whether the employer made
4 8 good faith efforts to comply with any applicable requirements;
4 9 the duration of the violation; the role of the directors,
4 10 officers, or principals of the employer in the violation; and
4 11 any other factors the court deems appropriate.

4 12 4. For a second violation of this section by an employer
4 13 during the period of probation as provided in subsection 3,
4 14 the court shall order the appropriate agencies to permanently
4 15 revoke all licenses that are held by the employer and that are
4 16 necessary to operate the employer's business at the employer's
4 17 business location where the unauthorized alien performed work.
4 18 If a license is not necessary to operate the employer's
4 19 business at the specific location where the unauthorized alien
4 20 performed work, but a license is necessary to operate the
4 21 employer's business in general, the court shall order the
4 22 appropriate agencies to permanently revoke all licenses that
4 23 are held by the employer at the employer's primary place of
4 24 business. On receipt of the order and notwithstanding any
4 25 other law, the appropriate agencies shall immediately revoke
4 26 the licenses.

4 27 5. An action for a violation of this section shall be
4 28 brought against the employer by the county attorney in the
4 29 county where the unauthorized alien employee is employed. The
4 30 county attorney shall not bring an action against any employer
4 31 for any violation of this section that occurs before January

4 32 1, 2009. A second violation of this section shall be based
4 33 only on an unauthorized alien who is employed by the employer
4 34 after an action has been brought resulting in a court order
4 35 for a violation of this section.

5 1 Sec. 4. NEW SECTION. 91F.4 COMPLAINTS == INVESTIGATION
5 2 == REFERRAL.

5 3 1. On receipt of a complaint that an employer is in
5 4 violation of section 91F.3, the attorney general or county
5 5 attorney shall investigate the complaint. When investigating
5 6 a complaint, the attorney general or county attorney shall
5 7 verify the work authorization of the alleged unauthorized
5 8 alien with the federal government pursuant to 8 U.S.C. }
5 9 1373(c). A state, county, or local official shall not attempt
5 10 to independently make a final determination on whether an
5 11 alien is authorized to work in the United States. An alien's
5 12 immigration status or work authorization status shall be
5 13 verified with the federal government pursuant to 8 U.S.C. }
5 14 1373(c). A person who knowingly files a false and frivolous
5 15 complaint under this subsection is guilty of a simple
5 16 misdemeanor.

5 17 2. If, after an investigation, the attorney general or
5 18 county attorney determines that the complaint is not
5 19 frivolous, the attorney general or county attorney shall
5 20 notify the United States immigration and customs enforcement
5 21 and the local law enforcement agency of the unauthorized
5 22 alien. If the complaint was originally filed with the
5 23 attorney general, the attorney general shall notify the
5 24 appropriate county attorney to bring an action pursuant to
5 25 section 91F.3.

5 26 Sec. 5. NEW SECTION. 91F.5 ATTORNEY GENERAL == DATABASE.
5 27 The attorney general shall maintain copies of court orders
5 28 that are received pursuant to section 91F.3, subsection 3, and
5 29 shall maintain a database of the employers with first
5 30 violations of section 91F.3 and make the court orders
5 31 available on the attorney general's internet site.

5 32 Sec. 6. NEW SECTION. 91F.6 EMPLOYER ACTIONS == FEDERAL
5 33 OR STATE LAW COMPLIANCE.

5 34 This chapter shall not be construed to require an employer
5 35 to take any action that the employer believes in good faith
6 1 would violate federal or state law.

6 2 EXPLANATION

6 3 This bill prohibits employers from knowingly employing an
6 4 unauthorized alien. An unauthorized alien is an alien who
6 5 does not have the legal right or authorization under federal
6 6 law to work in the United States.

6 7 New Code section 91F.1 provides applicable definitions.
6 8 The bill defines "agency" as a state agency, as defined in
6 9 Code section 8A.101, or political subdivision of this state
6 10 that issues a license for purposes of operating a business in
6 11 this state. The bill defines "license" as any agency permit,
6 12 certificate, approval, registration, charter, or similar form
6 13 of authorization that is required by law and that is issued by
6 14 an agency for the purposes of operating a business in this
6 15 state. Professional licenses are excluded from this
6 16 definition.

6 17 New Code section 91F.2 requires employers, beginning
6 18 January 1, 2009, to verify the employment eligibility of an
6 19 employee hired through the basic pilot program. The basic
6 20 pilot program is defined as the basic employment verification
6 21 pilot program as jointly administered by the United States
6 22 department of homeland security and the social security
6 23 administration.

6 24 New Code section 91F.3 provides that an employer shall not
6 25 knowingly hire an unauthorized alien. The Code section
6 26 provides that the determination of a person's status as an
6 27 unauthorized alien shall be governed by federal law. An
6 28 employer who has complied in good faith with federal
6 29 requirements relative to the employment of unauthorized aliens
6 30 establishes an affirmative defense and proof that the employer
6 31 verified the employee's status through the basic pilot program
6 32 creates a rebuttable presumption that an employer did not
6 33 knowingly employ an unauthorized alien. The Code section
6 34 provides that for a first violation of this Code section, the
6 35 court shall order a mandatory three-year probation and may
7 1 suspend all licenses held by the employer for a maximum of 10
7 2 days. In addition, the bill provides that the employer must
7 3 file a signed, sworn affidavit with the county attorney within
7 4 three business days, stating that the employer has fired all
7 5 unauthorized aliens and that the employer will not
7 6 intentionally or knowingly employ any unauthorized alien. For
7 7 a second violation during a period of probation, the court is

7 8 required to order the appropriate licensing agencies to
7 9 permanently revoke all licenses that are held by the employer.
7 10 The bill provides that an action for a violation of this Code
7 11 section shall be brought against the employer by the county
7 12 attorney in the county where the unauthorized alien employee
7 13 is employed but no action may be brought against any employer
7 14 for any violation of this Code section that occurs before
7 15 January 1, 2009.

7 16 New Code section 91F.4 concerns investigating complaints
7 17 that an employer knowingly hired an unauthorized alien. The
7 18 bill provides that the attorney general, or county attorney,
7 19 shall verify the work authorization of the alleged
7 20 unauthorized alien with the federal government. If the
7 21 attorney general or county attorney determines that the
7 22 complaint is not frivolous, the bill provides that the
7 23 attorney general or county attorney shall notify the United
7 24 States immigration and customs enforcement and the local law
7 25 enforcement agency of the unauthorized alien and the
7 26 appropriate county attorney shall be notified by the attorney
7 27 general if applicable. The bill provides that a person who
7 28 knowingly files a false and frivolous complaint is guilty of a
7 29 simple misdemeanor. A simple misdemeanor is punishable by
7 30 confinement for no more than 30 days or a fine of at least \$65
7 31 but not more than \$625 or by both.

7 32 New Code section 91F.5 requires the attorney general to
7 33 maintain copies of court orders that are received pursuant to
7 34 the bill and to maintain a database of the employers who have
7 35 a first violation of new Code section 91F.3 and make the court
8 1 orders available on the attorney general's internet site.

8 2 LSB 5662XS 82

8 3 ec/rj/8.1